

228788

STATE OF SOUTH CAROLINA

(Caption of Case)

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

Joint Application for Approval of the Transfer of the
Sewer Facilities, Territories, and Certificates of Public
Convenience and Necessity of Alpine Utilities, Inc.
and Woodland Utilities, Inc. to Palmetto Wastewater
Reclamation, LLC and the Grant of a Certificate of
Authority to Issue Securities

DOCKET
NUMBER: 2011 - 65 - S

Posted: led

Dept: SA

(Please type or print)

Submitted by: John M. S. Hoefer, Esquire Date: 3/24/11 SC Bar Number: 2549

Address: Post Office Box 8416 Telephone: 803-252-3300

Columbia, SC 29202 Time: 1:05 Fax: 803-771-2410

Other:

Email: jhoefer@willoughbyhoefer.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda expeditiously

☒ Other:

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input checked="" type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input checked="" type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input checked="" type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input checked="" type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

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MAR 24 2011
PSC SC
CLERK'S OFFICE

WILLOUGHBY & HOEFER, P.A.

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TRACEY C. GREEN
SPECIAL COUNSEL

*ALSO ADMITTED IN TX

March 24, 2011

VIA HAND DELIVERY

The Honorable Jocelyn D. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29211

RECEIVED
MAR 24 2011
PSC SC
CLERK'S OFFICE

RE: Joint Application for Approval of the Transfer of the Sewer Facilities, Territories, and Certificates of Public Convenience and Necessity of Alpine Utilities, Inc. and Woodland Utilities, Inc. to Palmetto Wastewater Reclamation, LLC and the Grant of a Certificate of Authority to Issue Securities; Docket No. 2001-65-S

Dear Mrs. Boyd:

Enclosed for filing pursuant to S.C. Code Ann. Regs. R. 103-825.3 (Supp. 2010) are the original and one (1) copy of the **Objection Of Joint Applicants to the Petition to Intervene** of Happy Rabbit, LP, in the above-referenced matter.

I would appreciate your acknowledging receipt of this Objection by date-stamping the extra copy that is enclosed and returning it to me in the envelope provided. I have served counsel of record with the same and enclose a certificate of service to that effect.

If you have any questions or if you need any additional information, please do not hesitate to contact me. With best regards, I am

Sincerely,

WILLOUGHBY & HOEFER, P.A.


John M.S. Hoefer

JMSH/ccm

Enclosures

cc: Shealy Boland Reibold, Esquire
Richard L. Whitt, Esquire
Jefferson D. Griffith, III, Esquire

RECEIVED
2011 MAR 24 11:11
SOUTH CAROLINA
PUBLIC SERVICE
COMMISSION

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2011-65-S

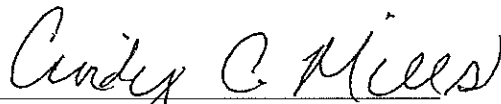
IN RE:)
)
Joint Application for Approval of the)
Transfer of the Sewer Facilities,)
Territories, and Certificates of Public)
Convenience and Necessity of Alpine)
Utilities, Inc. and Woodland Utilities,)
Inc. to Palmetto Wastewater)
Reclamation, LLC and the Grant of a)
Certificate of Authority to Issue)
Securities)
_____)

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day one (1) copy of the **Objection Of Joint Applicants to the Petition to Intervene by Happy Rabbit, LP**, by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Richard L. Whitt, Esquire
Jefferson D. Griffith, III, Esquire
Austin & Rogers, P.A.
508 Hampton Street, Suite 300
Columbia, SC 29201

Shealy Boland Reibold, Esquire
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, South Carolina 29201



Cindy C. Mills

Columbia, South Carolina
This 24th day of March, 2011.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2011-65-S

IN RE:

Joint Application For Approval of the)
Transfer of the Sewer Facilities, Territory,)
and Certificates of Public Convenience)
and Necessity of Alpine Utilities, Inc.)
and Woodland Utilities, Inc. to Palmetto)
Wastewater Reclamation LLC and the)
Grant of a Certificate of Authority to Issue)
Securities)
_____)

**JOINT APPLICANTS' OBJECTION TO
PETITION TO INTERVENE**

Joint Applicants, Alpine Utilities, Inc. ("Alpine"), Woodland Utilities, Inc. ("Woodland") and Palmetto Wastewater Reclamation LLC ("PWR"), pursuant to 26 S.C. Code Ann. Regs. RR. 103-825.A(3), hereby object to the Petition to Intervene of Happy Rabbit, a South Carolina Limited Partnership ("Happy Rabbit"), dated March 18, 2011, and filed with the Commission in the above-captioned matter. For the reasons discussed below, Joint Applicants request that their objection be sustained and the Petition to Intervene be denied.

Background

As the Commission may take notice of from its own records¹, Happy Rabbit and its general partners have previously filed three formal complaints with this Commission challenging the method employed by Alpine to bill Happy Rabbit for sewer service to the twenty-three duplex buildings containing forty-six residential apartment units that are owned by Happy Rabbit. *See* Complaint, September 15, 2008, Amended Complaint, April 6, 2009, Docket No. 2008-360-S and

¹See 26 S.C. Code Ann. Regs. RR. 103-846 and 847 (Supp. 2010).

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grs

Complaint, March 25, 2009.² In addition to these formal complaints, Happy Rabbit and its general partners have also filed with this Commission (1) an April 22, 2009, Petition for Clarification/Alternative Relief; (2) a September 22, 2009 Request for Supersedeas; (3) an October 9, 2009, Memorandum and Affidavit in Support of Request for Supersedeas Order; and (4) an October 28, 2009, letter requesting additional discovery.³ And, as the Commission is also aware, Happy Rabbit and Carolyn D. Cook instituted a civil action against Alpine in the Court of Common Pleas for the Fifth Judicial Circuit.⁴ See Order Nos. 2009-496, 2009-653, 2009-751 and 2010-125.

Happy Rabbit's Petition to Intervene

As the purported basis for its intervention, Happy Rabbit states that it "has concerns over the billing methods employed by Alpine." Petition to Intervene, Paragraph 2. Specifically, Happy Rabbit asserts that it "is billed on a monthly basis for apartment units that are unoccupied," that it is "also responsible for payment of all of its tenants'⁵ sewer bills," and that it is "billed for sewer

²These three formal complaints were dismissed without prejudice pending a resolution of related circuit court litigation. See Order No. 2009-496 (July 17, 2009) and n.4, *infra*. The related petitions for reconsideration by Happy Rabbit and its general partners were denied by the Commission in Order Nos. 2009-653 (September 18, 2009) and 2010-125 (February 9, 2010), Docket No. 2008-360-S.

³The relief sought in these filings has also been denied. See Order Nos. 2009-751, October 20, 2009, and 2010-125, February 9, 2010.

⁴This litigation, which Happy Rabbit sought to conduct as a class action on behalf of other owners of apartment buildings served by Alpine, met with no success. Attached hereto and incorporated herein by reference as Exhibit "A" is the Court of Appeals' Unpublished Opinion No. 2010-UP-558, December 23, 2010 ("Unpublished Opinion"), affirming the Circuit Court's dismissal of that civil action with prejudice and the March 7, 2011, remittitur of the Court of Appeals to the Circuit Court. There remains pending before the Court of Appeals Alpine's Motion for Costs of the appeal against Happy Rabbit and Carolyn D. Cook in the amount of \$39,568.40, which was filed pursuant to Rule 222, SCACR.

⁵This assertion is demonstrably incorrect because Alpine does not have accounts with, and does not issue bills to, tenants of Happy Rabbit. See Unpublished Opinion at 2 ("the complaint

service in a building that does not have sewer facilities.”⁶ *Id.* The Joint Applicants submit that the crux of Happy Rabbit’s stated concerns is simply this: Happy Rabbit has heretofore sought and received sewer service from Alpine, not to individual apartments with separate connections by which service may be terminated for non-payment, but to all 46 apartments that it owns and makes available for rental to its tenants and which are served by collection facilities owned by Happy Rabbit that have a single common connection to Alpine’s facilities. Happy Rabbit contends that it “is entitled to have these ‘issues’ resolved, before any transfer is approved.” *Id.*, Paragraph 3. It is clear that what Happy Rabbit seeks by its proposed intervention is to block the asset transfers contemplated by the Joint Application in the instant proceeding in order to coerce Alpine into either (a) relieving Happy Rabbit of its obligation to install separate connections for each dwelling unit served by Happy Rabbit’s collection system if Happy Rabbit desires to no longer be Alpine’s customer⁷, (b) modifying its lawful⁸ rate schedule to allow Happy Rabbit individual unit billing

alleges that Appellants and Alpine were already in an existing contractual relationship and ... and that Alpine would not let Appellants out of their contract”).

⁶Alpine is unaware of any circumstance which would support this assertion. To the best of Alpine’s knowledge, all twenty-three of Happy Rabbit’s buildings are compliant with S.C. Code Ann. §§ 27-40-210 (17) and 27-40-440 (Supp. 2010) (defining sanitary sewer as an “essential service” and obligating a landlord to provide sanitary services). Regardless, Happy Rabbit’s apparent admission that it maintains rental properties that do not have sewer facilities could only be an issue in a complaint proceeding under S.C. Code Ann. §58-5-270(Supp. 2010) where Happy Rabbit establishes that it has notified Alpine that it has a building that is no longer connected to Happy Rabbit’s collection system and for which Alpine is no longer responsible for making sewer capacity available to serve that building. Alpine has received no such notice.

⁷See S.C. Code Ann. Regs. R. 103-555.B (Supp. 2010) (“[e]ach customer’s service pipe shall serve no more than one customer”).

⁸*Hamm v. S.C. Public Service Comm’n*, 315 S.C. 119, 432 S.E.2d 454 (1993) (recognizing that rates and charges approved by the Commission are deemed just and reasonable).

where no means of individual service exists, or (c) permitting Happy Rabbit to avoid the requirement that it pay reconnection charges when and as it desires for Alpine to disconnect units (which would first have to be individually connected by Happy Rabbit to its collection system) to which Happy Rabbit chooses to no longer receive service.⁹ In addition to being of questionable propriety¹⁰, Happy Rabbit's Petition to Intervene is inadequate as a matter of law, without substantive merit, and should therefore be denied.

Argument

Initially, the Joint Applicants submit that Happy Rabbit's Petition to Intervene fails to satisfy two of the three requirements for a petition to intervene under 26 S.C. Code Ann. Regs. R. 103-825.A(3)(Supp. 2010) and should therefore be denied for failure to comply with the Commission's Rules of Practice and Procedure. Furthermore, and as the Commission observed in Order No. 2010-125 with respect to the various complaints filed by Happy Rabbit and its general partners, the subject matter of Happy Rabbit's Petition to Intervene has "already received the benefit of much time and focus by the Commission." *Id.* at 1. The Joint Applicants submit that the Petition to Intervene is wholly undeserving of any additional attention by this Commission because it raises the same issues as previously submitted by Happy Rabbit, which may be addressed by way of a separate complaint proceeding and are not proper for consideration in this proceeding.¹¹ For these reasons, Happy Rabbit's Petition to Intervene should be denied.

⁹See S.C. Code Ann. Regs. R.103-532.4 (Supp. 2010).

¹⁰*Cf.* S.C. Code Ann. §15-36-10(A)(3)(d) and (4)(a)(iv) (Supp. 2010).

¹¹Joint Applicants do not, by this assertion, intend to suggest that there is any factual or legal basis for a complaint by Happy Rabbit. To the contrary, and for the reasons set forth herein and in the prior filings by Alpine in proceedings in which Happy Rabbit and its partners have complained about Alpine, the Joint Applicants dispute that any basis for a complaint exists

(A) **Happy Rabbit's Petition to Intervene fails to state any grounds for its proposed intervention or its position in the proceeding as required by R. 103-825.A(3)(b) and (c).**

Initially, the Joint Applicants submit that the assertions set forth in paragraph 2 of Happy Rabbit's Petition to Intervene regarding Alpine's billing methods do not allege a ground for the proposed intervention which is cognizable in this proceeding as required by R. 103-825.A(3)(b). This proceeding involves a proposed transfer of assets of two sewer utilities, only one of which serves Happy Rabbit. The docket has been established by the Commission to address an application for approval of these transfers under 26 S.C. Code Ann. Regs. R.103-504. This docket has not been established to consider the continued, redundant complaints of Happy Rabbit regarding the application of Alpine's lawful rate schedule, which provides that sewer service for each apartment unit will be billed \$16.75 on a monthly basis. *Cf.* S.C. Code Ann. §58-5-270 (Supp. 2010) and 58-5-290 (1976). Nor could it be since Happy Rabbit specifically agreed that the provisions of Alpine's current rate schedule providing for a charge of \$16.75 per apartment unit was "just and reasonable, **reasonably designed**, and should be approved and adopted by the Commission."¹² Similarly, Happy Rabbit's allegation that it is required to be responsible for payment of all of its tenants' sewer bills is not a ground for intervention in this case since it has already been conclusively established that Happy Rabbit contracted to pay sewer charges for all

whatsoever. Nor do Joint Applicants concede that Happy Rabbit's Petition to Intervene is otherwise proper. See nn.9-10 and accompanying text, *supra*. Nonetheless, it is the position of the Joint Applicants that Happy Rabbit's putative "concerns over the billing methods employed by Alpine" are not properly aired in the instant proceeding and may be given such voice as they may deserve only by way of a properly initiated complaint proceeding.

¹²See Order No. 2008-759, Docket No. 2008-190-S, November 6, 2008, Exh. "1" at 5, paragraph 10 (**emphasis supplied**), Exh. "2" at 1.

units,¹³ and since – by its own terms – the Petition to Intervene confirms that no tenants of Happy Rabbit have accounts with Alpine.¹⁴ Regardless, the allegations of the Petition to Intervene at best describe matter which could be raised in a separate complaint proceeding – not grounds for intervention in the instant proceeding. Accordingly, Happy Rabbit’s Petition to Intervene does not satisfy R. 103-825.A(3)(b) and should therefore be denied.

Further, the Petition to Intervene does not state Happy Rabbit’s position with respect to the Joint Application as required under R.103-825.A(3)(c). Although it is clear from the Petition to Intervene that Happy Rabbit (improperly) seeks to delay a determination on the substance of the Joint Application¹⁵, its request to withhold approval of the Joint Application until its “issues” are “resolved” does not amount to an expression of a position with regard to the merits of the relief sought by the Joint Applicants, *i.e.*, approval to transfer the assets of Alpine and Woodland. Similarly, Happy Rabbit’s stated position¹⁶ is mere surplusage that does nothing more than state the obvious – that Happy Rabbit wants to intervene and be recognized as a party. The Joint Applicants submit that this lack of compliance with the requirements of R. 103-525.A(3)(c) is confirmation that Happy Rabbit’s proposed intervention is unrelated to the merits of this docket but

¹³See Unpublished Opinion at 2 (“the complaint alleges that [Happy Rabbit and Carolyn Cook] were already in an existing contractual relationship ... and that Alpine would not let [them] out of their contract”).

¹⁴Petition to Intervene, paragraph 2 (“Happy Rabbit is billed...”).

¹⁵*Id.*, paragraph 2 (“Happy Rabbit is entitled to have [its] issues resolved, before any transfer is approved”).

¹⁶*Id.*, paragraph 4 (“Happy Rabbit’s position is that it should be allowed to intervene in this docket with full rights of participation”).

is simply intended to improperly hinder the Joint Applicants in the pursuit of their lawful objectives. Accordingly, the Petition to Intervene should be denied for this reason, too.

(B) Happy Rabbit's "concerns" are not proper for consideration in this proceeding.

As noted above, Happy Rabbit does not state a position with respect to the merits of the Joint Application. Rather, Happy Rabbit seeks to expand this proceeding in a manner which would permit it to employ its concerns to extract from Alpine concessions regarding matters which, at best, could be raised in a complaint against Alpine and have no bearing on the instant docket. Happy Rabbit's contentions are not properly before the Commission for two reasons.

First, it is plain from the Petition to Intervene that Happy Rabbit's "concerns" are just that – its own concerns. Thus, its Petition to Intervene does not bear on the *public interest*, which is the lone standard by which the Joint Application is to be judged. See S.C. Code Ann. Regs. R. 103-504. Therefore, the Petition to Intervene not only fails to state any basis upon which it should be granted, but specifically reflects an interest that is purely pecuniary on the part of Happy Rabbit.

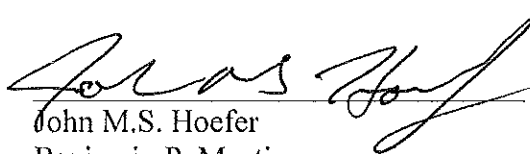
Furthermore, Happy Rabbit's effort to expand this proceeding is contrary to Commission precedent which precludes third parties from commandeering a proceeding for purposes other than those for which it has been established. Specifically, the Commission has heretofore ruled that it would not permit a state agency – which was charged with a public interest function – to expand the scope of a utility rate case to consider issues not raised in the utility's application. See Order No. 2001-498, Docket No. 2000-0207-W/S, November 17, 2007. The instant proceeding is not one established to address Happy Rabbit's continuing efforts to avoid its contractual obligations, modify Alpine's lawful rate schedule, or allow Happy Rabbit to receive and be billed for service as if it had installed facilities needed to allow individual service to each of its forty six apartment units. The Joint Applicants submit that the Petition to Intervene provides no basis for the Commission to

depart from this precedent and that it should be applied to deny Happy Rabbit the right of intervention.

Conclusion

Like the Commission, Alpine has already devoted much time to addressing Happy Rabbit's various complaints. As discussed above, Happy Rabbit's ill-motivated Petition to Intervene fails to satisfy two requirements of the Commission's regulation pertaining to intervention and improperly seeks to expand the scope of the instant proceeding. For these reasons, Happy Rabbit should not be permitted to intervene in this matter.

WHEREFORE, having fully set forth its Objection to the Petition to Intervene, the Joint Applicants respectfully request that Happy Rabbit's petition be denied.



John M.S. Hoefer

Benjamin P. Mustian

WILLOUGHBY & HOEFER, P.A.

Post Office Box 8416

Columbia, South Carolina 29202-8416

803-252-3300

Attorneys for Joint Applicants

Columbia, South Carolina

This 24th day of March, 2011

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Happy Rabbit, a South Carolina
Limited Partnership, and
Carolyn D. Cook, Appellants,

v.

Alpine Utilities, Inc., Respondent.

Appeal From Richland County
James R. Barber, III, Circuit Court Judge

Unpublished Opinion No. 2010-UP-558
Submitted December 1, 2010 – Filed December 23, 2010

AFFIRMED

Timothy F. Rogers, Richard L. Whitt, and Jefferson
D. Griffith, III, all of Columbia, for Appellants.

John M. S. Hoefer and Benjamin P. Mustian, both of
Columbia, for Respondent.

PER CURIAM: Appellants, Happy Rabbit, a South Carolina Limited Partnership, and Carolyn Cook, brought this action against Respondent Alpine Utilities, Inc. (Alpine) to recover damages for Alpine's alleged violations of section 27-33-50 of the South Carolina Code (2007), which prohibits utilities from requiring landlords to execute an agreement to be responsible for charges billed to premises leased by a tenant. The circuit court denied Appellants' motion for class certification and granted Alpine's motion to dismiss the complaint pursuant to Rule 12(b)(6), SCRCP. Appellants seek review of both orders. We affirm.¹

Appellants maintain that the circuit court erred in dismissing their complaint when it failed to view the complaint's factual allegations in the light most favorable to them. Initially, we doubt that section 27-33-50 creates a private right of action because it was not enacted for the special benefit of Appellants, but rather for the benefit of the public in general. See Dema v. Tenet Physician Servs.-Hilton Head, Inc., 383 S.C. 115, 121, 678 S.E.2d 430, 433 (2009) (holding that where not expressly provided, a private right of action may be created by implication only if the legislation was enacted for the special benefit of a private party rather than for the benefit of the public in general).

Even if a private right of action could be asserted under section 27-33-50, we find a disparity between the complaint's allegations and the specific actions the statute prohibits. Section 27-33-50 prohibits a utility from requiring a landlord to sign a new contract to be responsible for charges billed to premises leased by a tenant. Yet the complaint alleges that Appellants and Alpine were already in an existing contractual relationship on the effective date of section 27-33-50 and that Alpine would not let Appellants out of their contract. Therefore, Appellants have not stated facts sufficient to constitute a cause of action for violation of section 27-33-50. See S.C. Energy Users Comm. v. S.C. Pub. Serv. Comm'n, 388 S.C. 486, 491, 697 S.E.2d 587, 590 (2010) ("A statute as a whole must receive [a] practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers.") (internal quotation and citation omitted); Brazell v. Windsor, 384 S.C. 512, 515, 682 S.E.2d 824, 826 (2009) (holding

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

that in deciding whether a trial court properly granted a motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief).

Concerning Appellants' remaining exceptions, we affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the circuit court erred in dismissing Appellants' complaint when it considered a potential defense outside the four corners of the complaint: Spence v. Spence, 368 S.C. 106, 124, 628 S.E.2d 869, 878 (2006) (approving of the assertion of a defense in a motion to dismiss when there is no disputed issue of fact raised by the defense or when the facts are completely disclosed on the face of the pleadings, and realistically nothing further can be developed by pretrial discovery or a trial on the issue raised by the defense).

2. As to whether the circuit court erred in dismissing Appellants' complaint when it failed to grant leave to Appellants to file an amended complaint: Spence, 368 S.C. at 130-31, 628 S.E.2d at 882 (holding that when a complaint is dismissed with prejudice and the plaintiff is denied the opportunity to file and serve an amended complaint yet fails to present additional factual allegations or a different theory of recovery that may give rise to a claim on which relief may be granted, the appellate court may, in its discretion, affirm the dismissal of the complaint with prejudice); Kneece v. Kneece, 296 S.C. 28, 32, 370 S.E.2d 288, 291 (Ct. App. 1988) (finding a party's failure to move pursuant to Rule 59(e), SCRCF, to have the family court amend its decree to consider a certain issue prevented consideration of the issue on appeal).

3. As to whether the circuit court erred in dismissing Appellants' complaint when it failed to recognize that the complaint presented a novel issue: Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Office, 346 S.C. 158, 165, 551 S.E.2d 263, 267 (2001) (holding that when a dispute is not as to the underlying facts but as to the interpretation of the law, and development of the record will not aid in the resolution of the issues, it is proper to decide even novel issues on a motion to dismiss).

4. As to whether the circuit court erred in dismissing Appellants' complaint when Alpine had not responded to Appellants' pending discovery requests: Sullivan Co. v. New Swirl, Inc., 313 S.C. 34, 36, 437 S.E.2d 30, 31 (1993) ("Broad general statements of issues made by an appellant may be disregarded by this Court.").

5. As to whether the circuit court erred in allowing Alpine to argue a ground for dismissal that was not included in its motion to dismiss: Rule 220(b)(2), SCACR ("The Court of Appeals need not address a point which is manifestly without merit.").

6. As to whether the circuit court erred in denying Appellants' motion for class certification when the complaint's allegations satisfied the requirements of Rule 23(a), SCRCP: Byrd v. Irmo High Sch., 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996) (holding that an issue becomes moot when a decision, if rendered, will have no practical legal effect upon the existing controversy).

AFFIRMED.

THOMAS, PIEPER, and GEATHERS, JJ., concur.



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
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March 7, 2011

REMITTITUR

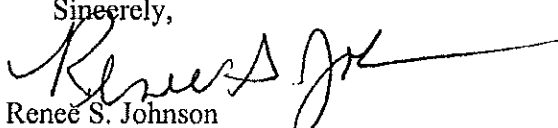
The Honorable Jeanette W. McBride
1701 Main Street, Room 205
PO Box 2766
Columbia, SC 29202

Re: Happy Rabbit v. Alpine Utilities
2008-CP-40-06619

Dear Mrs. McBride:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,


Renee S. Johnson
Administrative Specialist

VCA
TAG/rj

cc: Timothy F. Rogers, Esquire
Richard L. Whitt, Esquire
Jefferson D. Griffith, III, Esquire
John Marion S. Hoefer, Esquire

RECEIVED

MAR 09 2011

Willoughby & Hoefer, P.A.